No. 311. 549

Brief of Busbee & Battle for Appellees.

Filed April 25, 1896.

SUPREME COURT OF THE UNITED STATES.

No. ~~620~~. 311.

THE PATAPSCO GUANO COMPANY, APPELLANT,

versus

THE BOARD OF AGRICULTURE OF NORTH CAROLINA, W. R. WILLIAMS *et al.*, APPELLEES.

BRIEF OF

F. H BUSBEE,

R. H. BATTLE,
(Of Battle & Mordecai),
Solicitors for Appellees.

E. M. UZZELL, PRINTER AND BINDER, RALEIGH.

Supreme Court of the United States,

OCTOBER TERM, 1895.

No. 620.

THE PATAPSCO GUANO COMPANY, APPELLANT,

versus

THE BOARD OF AGRICULTURE OF NORTH CAROLINA AND W. R. WILLIAMS *et al.*, APPELLEES.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF NORTH CAROLINA.

Brief of Counsel for Appellees.

STATEMENT OF THE CASE.

This is a suit in equity, begun on April 1, 1892, by filing the original bill (record, pages 3–11) in the Circuit Court of the United States for the Eastern District of North Carolina. The purpose of the bill is to have the act of the General Assembly of North Carolina, entitled "An act to amend chapter 1, Volume II of The Code of North Carolina, relating to Agriculture and Geology," ratified January 21, 1891, and the laws of which this act was amendatory, adjudged to be unconstitutional and void, and also to enjoin the collection of an inspection charge, or tax, of twenty-five

cents per ton upon commercial fertilizers, which is provided for in that act.

Upon the filing of the bill, duly verified, a restraining order (record, pages 11 and 12) was granted; but upon the coming in of the answer (record, pages 15–19), a motion to continue the injunction, until the hearing, was heard upon bill, answer, affidavits and exhibits, and denied, and the temporary injunction was dissolved (record, page 29).

Proofs were taken and the case was heard at June Term, 1893, of the United States Circuit Court at Raleigh, upon the pleadings, depositions and exhibits. The bill was dismissed, and the plaintiffs appealed to the Supreme Court of the United States (record, page 120).

In the decree dismissing the bill Judge Seymour, presiding, refers to the opinion filed by him upon the motion to continue the injunction, in which the reasons for the decree are given; and the defendants in error desire that that opinion of the learned Judge be taken as a part of their brief. (Judge Seymours' opinion, record, pages 20–29).

The Code of North Carolina contains the entire general public statutes of the State in force in 1883. Volume II, chapter 1. By section 2184, a Department of Agriculture, etc., was established. By section 2190, a privilege, or license, tax of five hundred dollars upon each separate brand or quality of "manipulated guano, superphosphate or other commercial fertilizers, sold, or offered for sale, in the State," was imposed, and the fund arising from such tax (to which were added certain fines and penalties imposed for attempted violation or evasion of the law) was placed under the control of the Board of Agriculture, for certain specific purposes designated in the statute. By a suit in the Circuit Court of the United States for the Eastern District of North Carolina, entitled "*American Fertilizer Company* vs. *The Board of Agriculture et al.*," the constitutionality of that statute was drawn in question. At the

——— Term, 1890, the imposition of this license tax was declared to be in conflict with the Constitution of the United States, and void. See *American Fertilizer Company* vs. *Board of Agriculture*, 43 Federal Reporter, 609.

The Board of Agriculture accepted that decision in good faith, and appealed to the legislative department of North Carolina for an amendment to the law, in order to conform to the letter and spirit of the adjudication of the Court.

In January, 1891, the General Assembly of North Carolina passed "An act to amend chapter 1, Volume II of The Code, relating to Agriculture and Geology." Public Acts 1891, chapter 9, ratified January 21, 1891. The defendants think it is apparent, from the very language of this act, from its declared purpose and also from the accompanying enactments passed by the same Legislature, that it was the intention of the General Assembly to conform, both in letter and spirit, to the decision of the Court construing the former act.

A proper regard to the consideration due the law-making power of a State will strongly incline the Court to favor that construction of its statutes which upholds the good faith of the Legislature, if such be reasonable.

For the statute which had been declared to be in derogation of the Constitution of the United States the law-making power substituted an entirely different method of taxation, and in so doing declared its purpose in plain and unmistakable terms: "For the purpose of defraying the expenses connected with the inspection of fertilizers and fertilizing material in this State there shall be a charge of twenty-five cents per ton on such fertilizers and fertilizing materials for each fiscal year ending November 30th, which shall be paid before delivery to agents," etc. Acts of 1891, chapter 9, section 1.

By section 2 of the act, section 2191 of The Code is amended, by requiring the labels and stamps to be printed upon every package of fertilizers.

By section 4, for section 2193 of The Code is substituted a provision imposing a penalty upon every merchant, agent, etc., for selling fertilizers without the labels, stamps and tags provided by law.

The other sections provide the machinery for carrying the act into effect.

By section 9 a manufacturer of fertilizers, who complies with the statute, is exempt from any other taxes by city, town or county.

Section 10 repeals all laws in conflict with this act.

The Legislature thus declared its purpose to conform to the decision of the United States Court There must be a very obvious perversion of its constitutional power before the judicial department will declare the declaration of its purpose was fraudulent, and that the statute is void. This in no respect resembles the class of statutes in which under a transparent declaration of an intention to inspect, there is a patent attempt to interfere with the freedom of interstate commerce, as has been done in certain of the statutory regulations concerning the sale of dressed meats.

The amount of the tax thus assessed upon fertilizers, as a means of providing for their proper inspection and analysis, if compared with the tax assessed upon other property in the State upon the *ad valorem* principle, cannot justly be claimed to be exorbitant, nor does this view seem to be pressed by counsel for appellants. The main objection of the complainants seems to be that the whole amount of the tax is not necessary for the inspection of fertilizers, and that when collected it is largely applied to other purposes than inspection, and that its collection is an unauthorized regulation of interstate commerce. In other words, the complainant, throwing down the gauntlet to the State of North Carolina, challenges her good faith and declares that the Legislature has falsely stated the purpose of the act.

It is respectfully submitted that the object of the law, as

contained in the act itself, is constitutional and commendable. And the reasonable and proper inference is, that, by the repealing clause in section 10, it was the purpose of the Legislature to repeal all antecedent laws by which the proceeds of this tax were applied to other purposes than the inspection and analyses of fertilizers, and the maintenance of the proper officers and machinery for that purpose. This not only appears from the language of the statute itself, but is clearly shown by the general course of legislation during the session of 1891. The same General Assembly which passed this statute made express provisions for the support and maintenance of the more important institutions and objects which had theretofore been provided for, either in whole or in part, out of the moneys raised by the license tax upon the brands of fertilizers.

1. The five hundred dollars appropriated to the North Carolina Industrial Association was made payable out of the general fund of the State—Acts 1891, chapter 426. (We will note hereafter the contention of complainants that an old appropriation to this institution was revived by the repealing clause in section 10).

2. Acts of 1891, chapter 348, section 2, repeals the appropriation from this fund to the support of the Agricultural and Mechanical College, and makes other provision for the maintenance of that institution.

3. By Acts of 1891, chapter 417, the fund is relieved from the appropriation to the support of the Geological Survey and the publication of its reports, and ten thousand dollars is appropriated from the public treasury for that purpose.

4. The oyster interests, which had been connected with the Department of Agriculture, and the expenses of which had been defrayed from a fund to which the fertilizers contributed, by Acts of 1891, chapter 338, are provided for entirely from other sources.

A minute inspection of the statutes by the counsel of the appellants has brought to light no appropriation,

of the funds realized from the inspection tax upon fertilizers, made during or since the Act of 1891, or since the decision in *American Fertilizer Company* vs. *The Board of Agriculture.*

The contention of complainants is that, under the technical rules of the ancient law, the repeal of a recent act, making appropriations for purposes not in accordance with the decision of the Court upon the tax formerly imposed, amounts to a re-enactment of former statutes providing for these appropriations, which were similar to but not identical with the statutes that were repealed.

It is well enough to say, at the outset, that it is apparent that if any of the appropriations in force in 1891, payable out of the former tax received from the five-hundred-dollar license upon every brand of fertilizer, were not repealed, it was unintentional upon the part of the law-making power. It was the clear intention of the General Assembly, as is shown by the course of legislation, to repeal every act making an appropriation out of the fund realized from fertilizers, for any other purpose than for the legitimate inspection of fertilizers.

These laws had been declared unconstitutional, at least so far as the fertilizer fund was affected, and a tax to raise a fund partly for this purpose had been declared unconstitutional and void.

Can it be said that, if any law making such appropriation prior to the Act of 1891 escaped the scrutiny of the Legislature, by the force of such antecedent statute a failure to enact such repeal should be considered as rendering unconstitutional, not the law making the appropriation, but the act which declares the actual and only object in imposing an inspection charge of twenty-five cents per ton upon fertilizers, a purpose to defray the actual expenses of ther inspection and analysis?

It can hardly be successfully denied that there is no

article entering into common use in North Carolina, an inspection of which is so absolutely necessary for the protection of the citizens of the State engaged in agricultural operations, as commercial fertilizers. By a reckless course of husbandry, begun almost when the soil of the State was trodden by the feet of the first settlers, the elements of fertility in the virgin soil have been greatly exhausted. The uniform course was to clear the land, cultivate it year after year by exhaustive methods, and with slight return by fertilizing materials, and when it became unable to make satisfactory return, to abandon it as worthless, and make new clearings. So largely was this the case prior to 1861 that there were large movements of planters and slaves from North Carolina to the newer territory and richer alluvial soil of Alabama, Mississippi, Louisiana and the South-western States.

Immediately upon the close of the civil war the cultivation of cotton was greatly stimulated by the high prices obtainable, and the necessity for the use of commercial fertilizers was at once recognized. And the same is true of the increased demand for the finer grades of tobacco. The discovery of the phosphate rock in South Carolina gave a stimulus to the manufacturers, and the demands of the planters grew with successive years. The farmers of the State, so far as regards the quality of the material, were at the mercy of the manufacturers. The amount of ammonia, or nitrogen, phosphoric acid and potash, the three ingredients which make up the larger part of the value of commercial fertilizers, cannot be ascertained without the aid of skilled chemists, nor could it be ascertained whether the fertilizer furnished was of a uniform grade. The only test was the test of the soil, and that would take nine months to determine, and was liable to be affected by unfavorable seasons. The solubility of the phosphoric acid was of the greatest importance in the production of

the crop. It required the trained skill of an expert to determine the relative amounts and values of these fertilizing materials. The average farmer depended alone upon his sense of smell, and his success or failure in a previous year with a brand with the same name. The State was overrun with the agents of the competing manufacturers, whose lurid advertisements and magnificent promises were in inverse ratio to the values of the article they represented. It became imperatively necessary for the protection of our agricultural interests, which already bore the burden of much onerous indirect taxation, to be protected against the spurious and low grade fertilizers which were crowding the markets of the State. It seemed but just that the General Assembly should impose the actual cost of the inspection of these fertilizers upon the articles themselves. To do this required a responsible department in charge of the subject, a staff of agents who would select samples, not from those furnished by the manufacturers, but from the article actually on sale in the various counties of the State. To do this effectively many samples of each brand or grade must be taken, and from widely divergent localities. Samples must be taken in the late winter and early spring, destined to be used upon cotton and tobacco, vegetables, potatoes, and the various crops planted in the spring, and also in the autumn for small grain, cabbage and other winter crops.

An efficient corps of chemists and analysts must be provided and maintained, and this force must be kept together, and must be capable of performing a large part of the work in the limited season which intervenes between the shipment of the fertilizer to the State and its use upon the soil. It is of the greatest importance that the analyses shall be furnished in time to be of service to the planter in his selection of brands for the current season. Particularly is it necessary that this force shall be large, alert and efficient, in order that the manufacturer himself may despair

of being able to throw upon the farming community an inferior article, or one which did not correspond to the analyses printed upon the package.

What other protection could be given to the farming interests, upon the healthy condition of which so large a part of the prosperity, yea, almost the existence of the State depends?

It is necessary, therefore, that a charge for inspection should be made, which shall be certainly sufficient to insure the careful and thorough inspection of the fertilizers offered. No human ingenuity can estimate the exact amount of a charge which shall raise year by year a sum which should exactly balance the necessary expenses of the fertilizer station. The use of fertilizers varies very greatly with the agricultural condition of the year. If there be a small crop and an enhanced price for the previous year, we may naturally expect a much larger acreage, a more abundant use of fertilizers and increased labor force for the succeeding year. The amount realized from the tax in such a year will probably be in excess of the actual amount required. The very next year, the larger crop having had the inevitable result of causing a fall of prices and a general agricultural depression, the use of fertilizers is greatly deminished, and the amount of the tax is reduced in proportion. This tax, therefore, must be regulated by the law-making power, acting under their oaths to uphold the Constitution of the United States, and obliged therefore to diminish or increase the tax from time to time in their biennial sessions, if the amount shall be materially in excess or below the requirements for a proper inspection and analysis.

To the contention of the plaintiff, therefore, that a large part of the money raised by this inspection or license tax is not devoted to nor necessary for inspection, the reply is, that in reference to the application of the fund the larger

part is devoted to the maintenance of the Department charged with the actual work of inspection, and that such work, the collection of the samples, the analysis of the samples and the prompt publication and distribution, to those interested of the results of the analyses, were the principle functions and duties of the Department. If the machinery provided for this purpose is made to appear to the critical eye of the interested manufacturer as somewhat expensive, the answer is, that this is a matter vested in the discretion of the law-making power of the State. The object is most important to the agricultural interests of North Carolina, and the character of the substance to be analyzed, and the number of persons necessary for this work, as set forth above, and the prompt publication of the results and the distribution of bulletins to every post-office in North Carolina, all require a considerable expenditure. Without efficient protection under the supervision of a Board of Agriculture for the detection and exposure of spurious fertilizers the principal interest of the State would be in grave danger.

The reply to the second charge, that the moneys thus raised by the imposition of a charge of twenty-five cents per ton is not necessary for the purposes of inspection, is that it is impossible to determine in advance for any given year whether this is or is not a fact. The pleadings and evidence show, that the revenue derived from this tax is much less than the revenue derived from the privilege tax of five hundred dollars for each brand of fertilizers, and that the receipts are diminishing. During the fiscal year ending November 30, 1891, $32,972.96 was raised; for the year ending November 30, 1892, $26,044.53 (see evidence of H. M. Cowan, Chief Clerk to the Treasurer, record, p. 33). As the former tax of five hundred dollars on each brand had the natural effect of keeping out of the State many brands of fertilizers, so the change to a charge of twenty-five cents

on each ton had the immediate effect of bringing many manufacturers into the State, and resulted in a large increase in the number of brands and in the consequent expenses of their analysis.

The evidence of the Commissioner of Agriculture (record, page 71), is that before the change there were seventy-eight or eighty brands used in the State, and that the number had increased under the operation of the Act of 1891 to more than four hundred and twenty-five, and that the number of brands was increasing every year. This increase, of course, renders necessary greater vigilance on the part of those charged with taking samples for inspection, and an increase in the number of inspectors and of analytical chemists required. The vendors of fertilizers send their goods into the State by railway and water-ways entering the State in very many different directions, and the inspectors, to prevent imposition upon the farmers, must visit nearly every one of the ninety-six counties in which the State is divided—perhaps every one—to take samples for inspection.

Dr. H. B. Battle, the Director of the Experimental Station, or State Chemist, deposes (record, 89 and 90) that about five hundred and twenty-five analyses of fertilizers were made during the year 1892, and that a fair estimate of their cost was twenty dollars each. This involves an expenditure of ten thousand five hundred dollars alone for analyses. The evidence of R. L. Burkhead, Clerk of the Treasurer (record, pages 37–39), shows that eight thousand dollars per annum for 1891 and 1892 was paid by the Agricultural Experiment Station for this work, and, taken in connection with the evidence of the chemist, it is shown that this is not sufficient to pay the costs. The salaries of the inspectors amount to $2,700 (Robinson's evidence, pages 70 and 71); the price of tags (1,300,000, at $1.25 per thousand) amounts to fifteen hundred dollars (record,

page 72). When, to this are added express charges upon the fertilizer and the necessary miscellaneous expenses of the Department, such as servants' hire, travelling expenses of the inspectors, the legal expenses (which have been largely increased by the action of manufacturers), the salaries of the Commissioner and the Secretary, or a fair proportion thereof, most of their duties being directly connected with the inspection of fertilizers, there would be very little surplus left of the $26,000 collected by this tonnage tax. Certainly the Legislature cannot say, in advance, that all of the fund from that source may not be required to meet the expenses of inspection. Attention is invited to the tabulated statement of the expenses of the Department in Judge Seymour's opinion (record, page 25), and his comments thereon. The table covers only half the year 1892.

Some latitude must be allowed in respect to the expenditures which are made in carrying out such a law.

In the recent case of *Charlotte, etc., Railroad* vs. *Gibbes*, 143 U. S., 386, it was held by this Court that the tax levied upon railroad companies in order to defray the necessary expenses of a railway commission, including a salary of two thousand dollars each to three commissioners, was not unconstitutional.

We are not without direct authority from the State Courts, about the validity of similar legislation.

The identical question now before this court has been passed upon by the Court of Appeals of Kentucky, in *Van Meter* vs. *Spurrier*, 94 Ky., 22.

By a statute of Kentucky, approved April 13, 1886, entitled "An act to regulate the sale of fertilizers in this Commonwealth, and to protect agriculturists in the purchase and use of the same," it is provided that on or before the first day of May in each year, before any person or company shall offer for sale in Kentucky any fertilizer whose retail price is more than ten dollars per ton, such person or

company shall furnish to the Director of the Agricultural Experiment Station not less than one pound of such fertilizer, accompanied by an affidavit that it is a true sample of a commercial fertilizer, etc. It is made the duty of the Director to cause a chemical analysis of each sample to be made, and to set forth the result of the analysis in the form of a label. A violation of this act is made a misdemeanor, and for analyzing and affixing the certificate the sum of fifteen dollars is charged, and one dollar per hundred is charged for the labels. As the usual package of fertilizer is two hundred pounds, this makes a tonnage tax of ten cents per ton in addition to the charge of fifteen dollars for analysis.

Section 6 requires the Director to pay all such fees into the treasury of the Agricultural and Mechanical College of Kentucky, to be used "in meeting the legitimate expenses of the Station in making analyses of fertilizers in experimental tests of the same and in such other experimental work and purchases as shall enure to the benefit of the farmers of this Commonwealth."

The Court says: "The statute cannot be fairly constructed to authorize, in the language of counsel, a levy of an import on interstate commerce beyond what is necessary to insure inspection; nor is the language of section 6 susceptible of the meaning counsel gives it. The statute, as its title indicates, was enacted for the protection of farmers of this Commonwealth against fraud and imposition of those having for sale commercial fertilizers. To accomplish that object, each one selling, or offering to sell, any fertilizer, is required to submit a sample for analysis, and test of its quality, at the experimental station. For that purpose only can the fees collected by the Director be used, and in that way, and to that extent only, can farmers of the Commonwealth be benefited by the statute. In our opinion the law is valid in every respect."

It may be well enough here to make a general answer to the quotations made from the various cases cited in the appellant's brief arising out of statutes passed in the different States which provide for the inspection of dressed meats, flour and other articles:

Welton vs. *Missouri*, 91 U. S., 346.
R. R. vs. *Husten*, 95 U. S., 465.
Brimmer vs. *Rebman*, 136 U. S., 78.
Minnesota vs. *Barber*,136 U. S., 313.
Voight vs. *Wright*, 141 U. S., 62.

Of these cases it is enough for our present purpose to say, that in each instance it was apparent from the statute itself, that either it was the *object* of the law-making power to prohibit (or to lay such a tax as would amount to a prohibition of) the importation into the State of dressed meats, flour or other products of an adjoining State; or if such were not the object of the law-making power the certain *effect* of the operation of the statute would amount to such prohibition. In no instance did these statutes, improperly termed inspection laws, in their actual operation injuriously affect the products of the State passing the statute.

Some of the statutes contain provisions which are manifestly meant to prohibit the use of dressed meats in competition with the meats butchered in the home market, and this by the method of requiring an inspection of the meat within a few hours after it was butchered, etc.

The original package cases, such as *Bowman* vs. *C. & C. Railroad*, 125 U. S., 465; *Leisey* vs. *Hardin*, 135 U. S., 100, are declared not to be inspection laws.

It is needless to examine these cases in detail or to point out the distinction between them and the case at bar. None of the extracts cited in the brief of the appellant's counsel militate against the construction contended for by

the appellees. The statute under consideration bears as strongly upon the citizens and manufacturers of North Carolina as upon the citizens of other States. Neither in its terms nor in its effects does it prohibit the importation or manufacture of fertilizers. The tax imposed is expended to enhance the mercantile value of the honestly made article.

The object of the inspection laws must necessarily vary according to the character of the object inspected and the purport of the law.

It is true that in many instances inspection laws are passed "to prevent the introduction into the State of something which will endanger the health or life of the people." *New York* vs. *Miln*, 11 Peters, 102. It is also admitted that, as stated in *Gibbons* vs. *Ogden*, 9 Wheat, 1, "the object of an inspection law is to improve the quality of articles produced by the labor of a country, to fit them for exportation, or it may be for domestic use."

But nowhere has it ever been contended that this was the *only* object of an inspection law. In respect to fertilizers, great care and considerable expense are necessary to determine that they are fit for the use which they are offered. No one but a skilled analyst can tell this, except by actual test in the field, and in such test the fertilizers are necessarily destroyed.

A State law can act upon an import only after it has become mingled with the general property of the State, except so far as it may be necessary to ensure safety in the disposition of the import until it is thus mingled.

Bowman vs. *Chicago, etc., Railroad.*
Leisey vs. *Hardin*, above cited.

Inspection laws affecting many different articles of use in commerce (in none of which is the effect so hidden and uncertain as fertilizers) have been in force in North Caro-

lina for more than one hundred years. Some of them since 1777, twelve years before the Constitution of the United States went into effect. The Code of North Carolina, Volume II, chapter 28, sections 2982 to 3061.

The existence of such laws in Maryland before the adoption of the Constitution is mentioned by the Court in *Turner* vs. *Maryland*, 107 U. S., 38, as an argument for the constitutionality of the amendatory act then in question.

The Constitution distinctly recognizes the existence and necessity of inspection laws by the States, and that they may extend to imported articles as well as those of domestic production.

Article 1, section 10, clause 2 reads: "No State shall, without the consent of Congress, lay any imposts, or duties on imports or exports, except what may be absolutely necessary for *executing its inspection laws;* and the net produce of all duties and imposts, laid by the State on imports or exports, shall be for the use of the United States; and all such laws shall be subject to the revision and control of Congress."

While such imposts are limited to such as "may be absolutely necessary for executing its (the State's) inspection laws," the impracticability of framing a law which would provide for exactly the amount needed for inspection, and *no more*, is directly recognized, because the clause quoted goes on to provide that the excess, "the net produce," shall be for the use of the treasury of the United States.

It may well be contended that, when on the face of a law, nominally for inspection, it does not plainly appear that it was intended for other and different purposes, the courts have no right to interfere, but that the matter should be committed to the law-making power of the general government, as that clause of the Constitution says, "all such laws shall be subject to the revision and control of the Congress."

While the terms "imports" and "exports" in the Constitution apply only to articles imported from foreign countries or exported to them, as was held in *Woodruff* vs. *Parham*, 8 Wal., 823, and *Pittsburg, etc., Coal Company* vs. *Louisiana*, 156 U. S., 590, and the inhibition of the imposing duties on them, by the States, applies only to such articles, the recognition of the right of the State to protect its citizens and others by inspection laws, in a clause limiting the power of the States in reference to international commerce, is the more significant.

As to the right of the courts to interfere at all, this Court uses this language in *Turner* vs. *Maryland*, above cited, Justice Blatchford delivering the opinion:

"As is suggested in *Neilson* vs. *Garza*, 2 Wood, 287, by Mr. Justice Bradley, it may be doubtful whether it is not exclusively the province of Congress, and not at all of a court, to decide whether a charge, or duty, under an inspection law is not excessive. 107 U. S., page 55.

In all the cases, so far as we are aware, in which inspection laws of the States have been under consideration by the Court, the question has been, not as to whether the inspection charges were *excessive*, but whether they were a mere cover for laying revenue duties.

See *Soon Hing* vs. *Crowley*, 113 U. S., 703, at page 710.
Mugler vs. *Kansas*, 123 U. S., 623, at page 661.
People vs. *Compagnie Generale, etc.*, 107 U. S., 59 (63).
Minnesota vs. *Barber*, 136 U. S., 313, at page 319.

In the determination of the matter in the Court below his Honor did not think it necessary to discuss the question whether the law under consideration was an exercise of one of the police powers of the State. Without elaborating the point we cite some of the decisions which by analogy seem to show that the statute can be sustained as an exercise of such power.

In *Barbier* vs. *Connally*, 113 U. S., 27, at page 31, it is said that the Constitution of the United States "does not interfere with the power of the State, sometimes termed its police power, to prescribe regulations to promote the health, peace, morals, education and good order of the people, and to legislate so as to increase the industries of the State, develope its resources and add to its wealth and prosperity."

A State's police power extends to the protection of the lives, health and property of its citizens. *Beer Company* vs. *Massachusetts*, 97 U. S., 25; *Leisey* vs. *Hardin*, 135 U. S., 129; *Morgan* vs. *Louisiana*, 118 U. S., 435 (464).

The various decisions sustaining the Quarantine, Wharfage and Pilotage laws are in accordance with this decision.

In *Morgan* vs. *Louisiana*, *supra*, the Court says:

"Quarantine laws belong to that class of State legislation which, whether passed with intent to regulate commerce or not, must be admitted to have that effect, and which are valid until displaced or contravened by some legislation of Congress." 118 U. S., at page 465.

In *Ouachita Packet Co.* vs. *Aiken*, relied on by Judge Seymour (record, page 23), it is held that a municipal tax, which authorizes the collection of a wharfage rate, to be measured by tonnage estimated to be sufficient to light the wharves, keep them in repair, and construct new wharves when required, and which may realize a profit over expenses, does not violate the Constitution as being a burden on commerce. 121 U. S., 444.

And the like doctrine is held in *Packet Co.* vs. *St. Louis*, 100 U. S., 423.

While the charge of twenty-five cents per ton is alluded to in the evidence and in Judge Seymour's opinion as a "tonnage tax," it is not meant the duty of "tonnage" which the States are forbidden to impose by clause 3, section 10, Article I of the Constitution. As the term is there used it has reference only to vessels and their car-

goes. Nor is the alleged unconstitutionality of the charge put upon that ground by the bill, or in the assignment of errors in the decree of the Court below.

"The power of the State to provide for the general welfare of its people authorizes it to prescribe all such regulation as, in its judgment, will secure, or tend to secure, them against the consequences of ignorance and incapacity as well as deception and fraud."

This is the language of this Court in *Dent* vs. *West Virginia*, 129 U. S., 114 (122), and the principle thus enunciated is of general application. As deception and fraud are so easily practiced in the manufacture and sale of commercial fertilizers, the regulations in respect to them, by the existing law of North Carolina, and the small charge to defray the expenses of their enforcement seem to us eminently reasonable. And we need hardly call to our aid the general principle observed by the courts, that every statute is presumed to be constitutional, and that the courts ought not to decree one to be unconstitutional unless it is clearly so; and if there is a doubt the expressed will of the Legislature should be sustained.

Munn vs. *Illinois*, 94 U. S., 113 (123).

But, in the very recent case of *Plumley* vs. *Massahusetts*, 155 U. S., 461, we think this Court goes the full length of all we contend for here. In that case it was held, that the statute of Massachusetts of March 10, 1891, chapter 58, "to prevent deception in the manufacture and sale of imitation butter," in its application to the sales of oleomargarine artificially colored, so as to make it look like yellow butter, and brought into Massachusetts, is not in conflict with the clause of the Constitution of the United States investing Congress with power to regulate commerce among the States; and that *Leisey* vs. *Hardin*, 135 U. S., 100, does not justify the contention, that a State is powerless to pre-

vent the sale of articles of food manufactured in or brought from another State, and subjects of traffic or commerce, if their sale may cheat the people into purchasing something they do not intend to buy, and which is wholly different from what its condition and appearance import—to follow the language of the head notes. And at page 479 the Court, after reviewing cases relied upon by appellants and others, proceeds to say: "A State enactment forbidding the sale of deceitful imitations of articles of food, in general use among the people, does not abridge any privilege secured to citizens of the United States, nor, in any just sense, interfere with the freedom of commerce among the several States. It is legislation which 'can be most advantageously exercised by the States themselves.' *Gibbons* vs. *Ogden*, 9 Wheat, 1, 203."

"We are not unmindful of the fact—indeed this Court has often had occasion to observe, that the acknowledged power of the States to protect the morals, the health and safety of their people by appropriate legislation, sometimes touches, in the exercise, the line separating the respective domains of National and State authority. But in view of the complex system of government which exists in this country, 'promoting' as this Court, speaking by Chief Justice Marshall, has said, 'the rare and difficult scheme of one general government, whose action extends over the whole, but which possesses only certain enumerated powers, and of numerous State governments, which retain and exercise all powers not delegated to the Union,' the judiciary of the United States should not strike down a legislative enactment of a State, especially if it has just connection with the social order, the health and the morals of its people, unless such legislation plainly and palpably violates some right granted or secured by the National Constitution, or encroaches upon the authority delegated to the United States for the attainment of objects of national concern."

If a State can constitutionally enact laws, having relation to interstate commerce, for the promotion of *social order*, the *health* and the *morals* of its people, *surely* it can pass a law, whether for inspection or as a police regulation, to protect its people from imposition upon them of worthless fertilizers, the ignorant use of which may result in their financial ruin and the impoverishment of the State itself, a law designed for "the protection of persons and *property* against the noxious acts of others," to quote the language of the Court in

R. R. vs. *Van Husen*, 95 U. S., 465.

As the statute of North Carolina, in question, provides for the inspection of all commercial fertilizers found in the State, whether of home manufacture or otherwise, it is not liable to the objection that it is unconstitutional, as discriminating against those imported from other States, as in

Voight vs. *Wright*, 141 U. S., 62, 66.

Taking the *assignments of error*, *seriatim*, we think it has been shown: *First.* That the act of Januaray 21, 1891, is not violative of the Constitution of the United States, as set forth in the assignments of error *one* and *two*.

Second. That his Honor was justified in holding that the law imposing a charge, or tax, of twenty-five cents per ton upon fertilizers, was an *inspection law*, as it was declared upon its face to be; and therefore there is no basis for assignment of error number *three*.

Third. In reference to the *fourth* assignment of error, we say that by the statutes of the State, as amended, other moneys are raised for the Department, by fines, penalties and registration fees for the remaining expenses of the Board of Agriculture which were not connected with the inspection, and it does not appear, in view of the decrease of the fund and the multiplication of the brands, whereby

the expense of inspection is increased, that there will be an excess of revenue above that which is required for inspection only.

By the simple expedient of omitting all reference to the laws which have repealed or modified the provisions of The Code, the appellant has attempted to make it appear that the appropriations for the North Carolina College of Agriculture and Mechanic Arts, for the North Carolina Industrial Association, and for the expenses of the Geological Survey, are charged upon the fund raised by the fertilizer tax. All these statutes have been repealed. The contention that the former statutes making appropriations to the same objects of like amount were repealed by an express statute repealing the law in force in 1891, and providing for the payment of the same amount from other sources, seems to carry its own refutation with it. It nowhere appears, or by any reasonable intendment can be made to appear, that the Legislature intended, by the various acts already alluded to, during the session of 1891, to re-enact the former legislation making appropriations, when in the very act of the repeal they provide for the payment of the same sum out of the general funds of the State. The argument in Judge Seymour's opinion on this point (pp. 27 and 28 of the record) is conclusive.

Fourth. It does not appear that the Court refused to consider the evidence introduced to show that the money raised by the tax was in excess of what was required for inspection, as stated in assignment *six*, and on the evidence of *the plaintiff* the Court could not hold that the tax was much in excess of what was necessary for that purpose, as set forth in assignment *five*.

Fifth. There is a fallacy in the estimate of the expenses for inspection set forth in assignments *seven*, *eight* and *nine*. It consists in confining the expenses to the charge for analyses alone, whereas the salaries and expenses of the

inspectors and other officers charged with the duty of inspection, and of all the machinery adopted to prevent the imposition of spurious or worthless fertilizers on the people is properly chargeable to the fund raised by this charge or tax.

Sixth. The remaining assignments, *ten* to *fourteen*, are but statements in another form of the errors alleged in the assignments already considered, and we think they have been disposed of by what we have already said.

Our conclusion is, that some such legislation and machinery as have been adopted by the State of North Carolina were absolutely necessary to protect her people from fraud and imposition in their vital interest, to-wit, the successful cultivation of its soil, in raising its staple products of cotton, tobacco and grain, and that the plaintiff has failed to show, that the very moderate tax of twenty-five cents per ton on fertilizers will certainly produce a revenue more than sufficient, in view of the considerations suggested, for purposes of inspection. Should it prove to be greater than is required it is fair to presume that the Legislature will reduce the charge; and that upon the pleadings and evidence the Court below did not err in holding that the legislation is not *colorably* for *inspection*, but really for other purposes.

F. H. BUSBEE,
R. H. BATTLE,
(For Battle & Mordecai),
Solicitors for Defendants, Appellees.